

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

**CIVIL CASE NO. 3:05cv283
[Lead Case]**

JOHN F. SIMONTACCHI,)
)
 Plaintiff,)
)
 vs.)
)
INVENSYS, INC.,)
)
 Defendant.)

PARTIAL JUDGMENT

THIS MATTER is before the Court on the Defendant's Motion for Summary Judgment, and the Court having determined that said Motion should be granted in part and denied in part for the reasons set forth in the Memorandum of Decision and Order that is being filed contemporaneously herewith, and based thereon

IT IS ORDERED ADJUDGED AND DECREED as follows:

1. Judgment is entered in favor of the Defendant and against the Plaintiff, and the Plaintiff shall have and recover nothing of the Defendant by virtue of the Plaintiff's claims brought in 3:06cv52, particularly including those claims for short term disability benefits,

breach of contract, declaratory judgment, breach of the covenant of good faith and fair dealing and violations of the North Carolina Wage and Hour Act, and those claims are hereby **DISMISSED WITH PREJUDICE.**

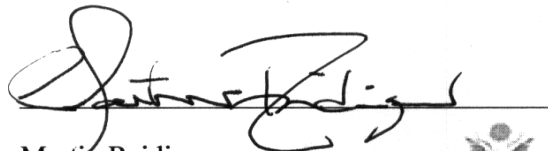
2. Judgment is entered in favor of the Defendant and against the Plaintiff, and the Plaintiff shall have and recover nothing of the Defendant by virtue of the Plaintiff's purported "counterclaims" brought in 3:06cv52, particularly including those claims for breach of contract, specific performance, malicious use of process and abuse of process, and those claims are hereby **DISMISSED WITH PREJUDICE.**
3. Judgment is entered for Defendant and against the Plaintiff on the issue of the Plaintiff's liability to Defendant on Defendant's counterclaim brought in 3:05cv283 for breach of contract, and the issue of damages for such liability is set for trial.
4. Judgment is entered for Defendant and against the Plaintiff on the issue of the Plaintiff's liability to Defendant on Defendant's counterclaim brought in 3:06cv52 for breach of contract, and the issue of damages for such liability is set for trial.
5. Judgment is entered for the Plaintiff and against the Defendant, and

the Defendant shall have and recover nothing of the Plaintiff by virtue of Defendant's counterclaim in 3:06cv52 for unjust enrichment, and said counterclaim is hereby **DISMISSED** as moot in light of the dismissal of the Plaintiff's claim for short term disability benefits.

6. Judgment is entered for the Plaintiff and against the Defendant, and the Defendant shall have and recover no relief of the Plaintiff by virtue of Defendant's counterclaim in 3:06cv52 for specific performance, and said counterclaim is hereby **DISMISSED WITH PREJUDICE**.

IT IS FURTHER ORDERED that the Plaintiff's ERISA claim for long-term disability benefits is hereby **SEVERED** from the actions and claims addressed in this Partial Judgment and will be ruled on by separate Order.

Signed: January 11, 2008


Martin Reidinger
United States District Judge

